

Sixth Appellate District

San Jose, California

MONDAY, DECEMBER 15, 2003

H025449 PEOPLE v. MIGUEL R.

The jurisdictional order is affirmed. (not published)  
(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J.,  
Mihara, J.)

Filed December 15, 2003

H025304 In re ERNEST SMITH on Habeas Corpus

The trial court's order granting the petition for habeas corpus and directing Smith's immediate release is reversed. The matter is remanded to the trial court for entry of a new and different order directing the Governor to vacate his decision reversing the Board. The Board's decision shall be deemed reinstated as of the date of the trial court's order. Thereafter, the Governor, at his discretion, may review the Board's decision and issue a new determination under his constitutional and statutory authority and in accordance with the requirements of due process. (published)

(Wunderlich, J.; We concur: Rushing, P.J., Mihara, J.)

Filed December 15, 2003

H025139 PEOPLE v. KUMRE

The judgment is affirmed. (not published)  
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J.,  
Wunderlich, J.)

Filed December 15, 2003

H024801 PEOPLE v. HUYNH, et al.

The judgments as to Huynh and Cun are affirmed. The judgments as to Tran and Nguyen are ordered modified to state that the enhancements imposed and stayed on counts 2, 4, and 6 are one-year section 12022, subdivision (a)(1) enhancements rather than four-year section 12022.5, subdivision (a)(1) enhancements. As so modified, the judgments as to Nguyen and Tran are affirmed. (not published)

(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J.,  
Mihara, J.)

Filed December 15, 2003

H025499 FULKERSON v. COUNTY OF SANTA CRUZ, et al.

The judgment is affirmed. (not published)  
(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J.,  
Mihara, J.)

Filed December 15, 2003

Sixth Appellate District

San Jose, California

TUESDAY, DECEMBER 16, 2003

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Rushing, P.J.; Premo, J.; Elia, J.; and W. Magsaysay, Deputy Clerk.

H025249 PEOPLE v. SOTELO

Cause called and argued by Paul Couenhoven appearing for Appellant and by Morris Lenk, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H025229 PEOPLE v. SUPERIOR COURT (COOPER)

Cause called and argued by Marilyn Masciarelli, Deputy District Attorney, appearing for Petitioner and by David B. Tarica appearing for Real Party in Interest. Cause ordered submitted.

H024988 PEOPLE v. REED

Cause called and argued by Lark L. Ritson appearing for Appellant and by John R. Vance, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H023768 PEOPLE v. PETZNICK

Cause called and argued by Stephen Greenberg appearing for Appellant and by John R. Vance, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H024999 PEOPLE v. TIANO

Cause called and argued by Arthur Dudley appearing for Appellant and by Michelle J. Pirozzi, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H024838 FRAGOSA v. GAVILAN COLLEGE, et al.

Cause called and argued by Rand L. Stephens appearing for Appellant and by John A. Shupe appearing for Respondent Gavilan College, by Frank Guy Tiesen appearing for Respondent Monterey County, and by Graeme E. Sharpe, Deputy Attorney General, appearing for Respondent Department of Justice. Cause ordered submitted. Thereafter, Elia, J. leaves the bench and Mihara, J. joins the panel.

Sixth Appellate District

San Jose, California

Tuesday, December 16, 2003 (continued)

H024841 SANTA TERESA CITIZEN ACTION GROUP, et al. v. CITY OF SAN JOSE; SANTA CLARA VALLEY WATER DISTRICT, et al.

Cause called and argued by Stephan C. Volker appearing for Appellants, by Joseph DiCiuccio, Deputy City Attorney, appearing for Respondent City of San Jose, by Roger Beers appearing for Respondent Santa Clara Valley Water District and by Ann Mudge appearing for Respondent Calpine Corporation. Cause ordered submitted. Court recesses until 1:30 p.m.

The Court reconvened at 1:30 p.m. in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Premo, Acting P.J.; Elia, J.; and Jane Valdez Flor, Deputy Clerk.

H024632 PEOPLE v. HERNANDEZ

Cause called and argued by Deanna Lamb appearing for Appellant and by Sharon G. Birenbaum, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H025943 PEOPLE v. JUSTIN P.

Cause called and argued by Maryam S. Karson appearing for Appellant and by Jack Newman, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H023260 PEOPLE v. WEATHINGTON

Cause called and argued by Jill A. Fordyce appearing for Appellant and by Ryan B. McCarroll, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H025709 CHAVEZ, et al. on Habeas Corpus

H024953 YAQUB v. SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM

H024749 GALLO v. STANFORD UNIVERSITY, et al.

H025154 GALLO v. STANFORD UNIVERSITY, et al.

The above cases have been continued to December 18, 2003, at 9:30 a.m. Court is adjourned.

H026248 PEOPLE v. SAETEURN

The judgment is affirmed. (not published)  
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J.,  
Wunderlich, J.)  
Filed December 16, 2003

Sixth Appellate District

San Jose, California

Tuesday, December 16, 2003 (continued)

H025559 PEOPLE v. GARCIA

The order for reimbursement of probation costs is stricken. In all other respects, the judgment is affirmed. (not published) (Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J., Mihara, J.)

Filed December 16, 2003

H024806 PEOPLE v. MCDADE

(Filed order modifying opinion.) There is no change in judgment. Appellant's petition for rehearing is denied. (not published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed December 16, 2003

H025926 PEOPLE v. COLLINS

The judgment is affirmed. (not published)

(Elia, J.; We concur: Rushing, P.J., Premo, J.)

Filed December 16, 2003

H025356 In re MONISIA G.; DFCS v. MONIKA G.

The order of October 24, 2002, is affirmed. (not published) (Wunderlich, J.; We concur: Bamattre-Manoukian, Acting P.J., Mihara, J.)

Filed December 16, 2003

WEDNESDAY, DECEMBER 17, 2003

H026224 PEOPLE v. ROBINSON

The judgment is affirmed. (not published)

(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J., Mihara, J.)

Filed December 17, 2003

H025436 PEOPLE v. DIAZ

H026030 DIAZ on Habeas Corpus

The judgment is affirmed. The habeas petition is denied. (not published)

(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J., Mihara, J.)

Filed December 17, 2003

Sixth Appellate District

San Jose, California

Wednesday, December 17, 2003 (continued)

H025035 PEOPLE v. GONZALES

The judgment is affirmed. (published)  
(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J.,  
Mihara, J.)  
Filed December 17, 2003

H024942 KUSHNIR, et al. v. DAVI

The judgment is affirmed. (not published)  
(Mihara, J.; We concur: Elia, Acting P.J., Wunderlich, J.)  
Filed December 17, 2003

H025100 PEOPLE v. MANQUEROS

The judgment is hereby modified to reduce the restitution  
fine from \$10,000 to \$200. The trial court is directed to  
prepare an amended abstract of judgment reflecting this  
modification and to forward a certified copy of the amended  
abstract to the Department of Corrections. The modified judgment  
is affirmed. (not published)  
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J.,  
Wunderlich, J.)  
Filed December 17, 2003

H025522 PEOPLE v. ARAS-MALDONADO

The order providing for AIDS testing pursuant to section  
1202.1 is stricken. As modified, the judgment is affirmed. The  
trial court is directed to amend the abstract of judgment and  
forward a copy of the amended abstract to the Department of  
Corrections. (not published)  
(Elia, J.; We concur: Rushing, P.J., Premo, J.)  
Filed December 17, 2003

THURSDAY, DECEMBER 18, 2003

H025003 PEOPLE v. NGUYEN

H025598 PEOPLE v. NGUYEN

The judgment is affirmed. (not published)  
(Premo, Acting P.J.; We concur: Elia, J., Bamattre-Manoukian, J.)  
Filed December 18, 2003

Sixth Appellate District

San Jose, California

Thursday, December 18, 2003 (continued)

H025324 GILBERT, et al. v. CITY OF SAN JOSE

The judgment is modified to state the following. "Before defendant discloses personal information collected under the Ordinance, it must take reasonable steps to notify the person to whom the information pertains of the pendency and nature of the request for the information and to afford the person a fair opportunity to object to disclosure, to join in resisting disclosure, or to institute appropriate legal proceedings to resist disclosure or limit the scope or nature of the matters sought to be discovered." As so modified, the judgment is affirmed. (published)

(Premo, Acting P.J.; We concur: Elia, J., Bamattre-Manoukian, J.)  
Filed December 18, 2003

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Rushing, P.J.; Elia, J.; Wunderlich, J.; and S. Nasson, Deputy Clerk.

H024399 KLOSTER, et al. v. SUPERIOR COURT; STEEVES, et al.

Cause called and argued by Kelly Walker appearing for Appellants and by George Kovacevich appearing for Respondents. Cause ordered submitted. Wunderlich, J. leaves the bench. Premo, J. takes the bench.

H025709 CHAVEZ, et al. on Habeas Corpus

Cause called and argued by Neal Kimball, Deputy District Attorney, appearing for Appellant and by Keith Wattley and Steve Defilippis appearing for Respondents. Cause ordered submitted.

H024953 YAQUB v. SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM, et al.

Cause called and argued by Charles Kagay appearing for Appellant and by Jacquelyn Garman appearing for Respondents. Cause ordered submitted. Elia, J. leaves the bench. Bamattre-Manoukian, J. takes the bench.

H025145 WURTMAN v. E\*TRADE GROUP, INC., et al.

Cause called and argued by Francis Bottini appearing for Appellant and by Kevin Muck appearing for Respondents. Cause ordered submitted. Bamattre-Manoukian, J. leaves the bench. McAdams, J. takes the bench.

Sixth Appellate District

San Jose, California

Thursday, December 18, 2003 (continued)

H024749 GALLO v. STANFORD UNIVERSITY, et al.

H025154 GALLO v. STANFORD UNIVERSITY, et al.

Cause called and argued by Bela Gallo, Appellant appearing in propria persona. No appearance is made on behalf of Respondents. Cause ordered submitted. Rushing, P.J., Premo, J., and McAdams, J. leave the bench. Bamattre-Manoukian, Acting P.J., Wunderlich, J. and Mihara, J. take the bench.

H025660 AMDAHL CORPORATION v. COUNTY OF SANTA CLARA

Cause called and argued by John Ryan appearing for Appellant and by James Rees, Deputy County Counsel, appearing for Respondent. Cause ordered submitted.

H025348 GONZALES v. SANTA CRUZ METROPOLITAN TRANSIT DISTRICT, et al.

Cause called and argued by Jay Bloombecker appearing for Appellant and by Michael Serverian appearing for Respondents. Cause ordered submitted.

H025207 BONTA, as Director, etc. v. PEREZ

Cause called and argued by Luis Perez, Appellant appearing in propria persona and by Susan King, Deputy Attorney General, appearing for Respondent. Cause ordered submitted. Court stands in adjournment until the 1:30 p.m. calendar.

H025212 PEOPLE v. RAZO

(Filed order modifying opinion.) There is no change in the judgment. (not published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed December 18, 2003

H024999 PEOPLE v. TIANO

The judgment is affirmed. (not published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed December 18, 2003

H025249 PEOPLE v. SOTELO

The judgment is affirmed. (not published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed December 18, 2003

Sixth Appellate District

San Jose, California

Thursday, December 18, 2003 (continued)

H024838 FRAGOSO v. GAVILAN COLLEGE, et al.

The judgment is affirmed. The order dismissing the action against County is affirmed. (not published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed December 18, 2003

H024841 SANTA TERESA CITIZEN ACTION GROUP, et al. v. CITY OF SAN JOSE, et al.; SANTA CLARA VALLEY WATER DISTRICT, et al.

The judgment is affirmed. (not published)  
(Premo, J.; We concur: Rushing, P.J., Mihara, J.)  
Filed December 18, 2003

H023768 PEOPLE v. PETZNICK

The judgment is reversed. The matter is remanded for retrial of the charge of conspiracy to commit murder and the special circumstance allegation of murder committed by torture. If within 30 days of the date this opinion is final the District Attorney does not elect to retry defendant, the trial court shall enter judgment against defendant on count 1 for the crime of conspiracy to commit burglary and robbery, on count 2 for the crime of first degree murder with special circumstances of murder in the course of burglary and murder in the course of robbery (but without the torture-murder special circumstance), and on counts 3, and 4 as previously entered. In the event the District Attorney elects to retry defendant as specified, the trial court shall thereafter enter judgment consistent with the results of retrial and with that portion of the prior judgment unaffected by this decision. In either case, the trial court shall resentence defendant without imposing a parole revocation fine. (published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed December 18, 2003

H026009 PEOPLE v. MILLS

The judgment is ordered modified by striking the \$70 AIDS education fund fine. As so modified, the judgment is affirmed. (not published)  
(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J., Mihara, J.)  
Filed December 18, 2003

Sixth Appellate District

San Jose, California

Thursday, December 18, 2003 (continued)

H025229 PEOPLE v. SUPERIOR COURT (COOPER)

The petition for writ of mandate is granted. Let a peremptory writ of mandate issue directing respondent court to vacate its order rejecting the People's peremptory challenge and enter a new order accepting the challenge. (published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed December 18, 2003

H025963 PEOPLE v. PAUL T.

By the Court\*:

Appellant's petition for rehearing is denied.

Filed: December 18, 2003

\*Before Rushing, P.J., Premo, J. and Elia, J.

The Court reconvened at 1:30 p.m. in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Premo, Acting P.J.; Bamattre-Manoukian, J.; Wunderlich, J.; and J. Michel Casique, Deputy Clerk.

H025443 ALEXANDER v. SUPERIOR COURT OF SANTA CLARA COUNTY; BRIX GROUP, INC.

Cause called and argued by Kari L. Ley appearing for Petitioner and by Heather Hoesterey appearing for Real Party in Interest. Cause ordered submitted.

H025443 BELLAMY, et al v. SUPERIOR COURT OF SANTA CLARA COUNTY; BRIX GROUP, INC.,

Cause called and argued by Kari L. Ley appearing for Petitioners and by Heather Hoesterey appearing for Real Party in Interest. Cause ordered submitted.

Premo, Acting P.J. leaves the bench and Mihara, J. takes the bench.

H025447 PEOPLE v. FRANCISCO C.

Cause called and argued by Daniel Byrne appearing for Appellant and by Jill Thayer, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H025639 PEOPLE v. DHANOTA

Cause called and argued by Adrian Dell appearing for Appellant and by Jill Thayer, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Sixth Appellate District

San Jose, California

Thursday, December 18, 2003 (continued)

H025125 PEOPLE v. OBUJEN

Cause called and argued by Gordon S. Brownell appearing for Appellant and by Ayana A. Cuevas, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H025493 THOMPSON, et al v. CUTINI, et al.

Cause called and argued by James McNair appearing for Appellants and by Nicholas Bennett Waranoff appearing for Respondents. Cause ordered submitted.

H025976 PACIFIC GROVE ACTION COMM., et al. v. PACIFIC GROVE CITY COUNCIL; CAL.-NEVADA METHODIST HOMES

Cause called and argued by Alexander T. Henson appearing for Appellants, by David Michael Fleishman appearing for Respondent, and by Walter Schreiber appearing for Real Party in Interest. Cause ordered submitted. Court stands in adjournment.

H025339 PEOPLE v. ZELLER

By the Court\*:

Appellant's petition for rehearing is denied.

Filed: December 18, 2003

\*Before Bamattre-Manoukian, Acting P.J., Wunderlich, J. and Mihara, J.

H024693 PEOPLE v. HASSINGER

The judgment is affirmed. (not published)

(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J., Mihara, J.)

Filed December 18, 2003

H025350 PEOPLE v. CRAMER

(Filed order modifying opinion.) There is no change in the judgment. (not published)

(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J., Mihara, J.)

Filed December 18, 2003

H025943 PEOPLE v. JUSTIN P.

The judgment is affirmed. (not published)

Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed December 18, 2003

Sixth Appellate District

San Jose, California

FRIDAY, DECEMBER 19, 2003

H025493 THOMPSON, et al. v. CUTINI

The judgment is affirmed. (not published)  
(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J.,  
Mihara, J.)  
Filed December 19, 2003

H025443 ALEXANDER v. SUPERIOR COURT (THE BRIX GROUP, INC.)

H025471 BELLAMY, et al. v. SUPERIOR COURT (THE BRIX GROUP, INC.)

In *Alexander v. Superior Court (Brix)*, H025443: Let a  
peremptory writ of mandate issue commanding the respondent court  
to vacate its order denying petitioner's motion for change of  
venue and to reconsider its ruling to determine whether,  
consistent with the requirements of Code of Civil Procedure  
section 395, venue is otherwise proper in Santa Clara County.  
The temporary stay order is vacated upon the finality of this  
opinion.

The parties shall bear their own costs on appeal.

In *Bellamy v. Superior Court (Brix)*, H025471: Let a  
peremptory writ of mandate issue commanding the respondent court  
to vacate its order denying petitioners' motion for change of  
venue and to reconsider its ruling to determine whether,  
consistent with the requirements of Code of Civil Procedure  
section 395, venue is otherwise proper in Santa Clara County.  
The temporary stay order is vacated upon the finality of this  
opinion.

The parties shall bear their own costs on appeal.

(published)  
(Premo, Acting P.J.; We concur: Bamattre-Manoukian, J.,  
Wunderlich, J.)  
Filed December 19, 2003

H024749 GALLO v. STANFORD UNIVERSITY GRADUATE SCHOOL OF  
BUSINESS, et al.

H025154 GALLO v. STANFORD UNIVERSITY GRADUATE SCHOOL OF  
BUSINESS, et al.

The order denying plaintiff's motions to correct arbitration  
award and enforce postjudgment interest order and granting  
defendants' motion for sanctions is affirmed. (not published)

(Premo, J.; We concur: Rushing, P.J., McAdams, J.)  
Filed December 19, 2003

Sixth Appellate District

San Jose, California

Friday, December 19, 2003 (continued)

H025976 PACIFIC GROVE ACTION COMMITTEE, et al. v. PACIFIC GROVE CITY COUNCIL; CALIFORNIA-NEVADA METHODIST HOMES, et al.

The judgment is affirmed. (not published)  
(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J., Mihara, J.)

Filed December 19, 2003

H025932 PARK v. STATE BAR OF CALIFORNIA, et al.

The judgment is affirmed. (not published)  
(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J., Mihara, J.)

Filed December 19, 2003

H025207 BONTA, as Director, etc. v. PEREZ

The judgment is affirmed. (not published)  
(Bamattre-Manoukian, Acting P.J.; We concur: Wunderlich, J., Mihara, J.)

Filed December 19, 2003

H025275 PEOPLE v. LEACH

The judgment is affirmed. (not published)  
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., Wunderlich, J.)

Filed December 19, 2003

H025599 PEOPLE v. MUSZYNSKI

The judgment is modified to stay the term imposed on Count IV for arson, in violation of section 451, subdivision (a). The Clerk for the Superior Court is directed to correct the abstract of judgment to reflect the stay on this count and forward a certified copy to the Department of Corrections. As amended, the judgment is affirmed. (not published)

(Wunderlich, J.; We concur: Rushing, P.J., Mihara, J.)

Filed December 19, 2003

H025054 CANLIS v. CIVIL SERVICE COMMISSION OF SANTA CRUZ COUNTY, et al.; JOHNSON

(Filed order modifying opinion.) This modification does not affect the judgment. Request for an award of attorneys fees is denied. (not published)

(Mihara, J.; We concur: Rushing, P.J., Wunderlich, J.)

Filed December 19, 2003

Sixth Appellate District

San Jose, California

Friday, December 19, 2003 (continued)

H024123 PEOPLE v. VIJAY

The judgment is affirmed. (not published)  
(Elia, J.; We concur: Rushing, P.J., Premo, J.)  
Filed December 19, 2003

H025036 PEOPLE v. SWANSON-BIRABENT

The order dismissing the charges against defendant Holly Swanson-Birabent is reversed. The information charging defendant Holly Swanson-Birabent with two counts of violating section 288, subdivision (a) shall be reinstated. (published)  
(Bamattre-Manoukian, J.; We concur: Premo, Acting P.J., Elia, J.)  
Filed December 19, 2003

H025101 PEOPLE v. CARUTHERS

The judgment is affirmed. (not published)  
(Wunderlich, J.; We concur: Bamattre-Manoukian, Acting P.J., Mihara, J.)  
Filed December 19, 2003

H024770 OLSON, et al. v. MURRAY, et al.; YATES, et al. v. WASHINGTON MUTUAL BANK, et al.

The judgments are affirmed.  
(Elia, J.; We concur: Rushing, P.J., Premo, J.)  
Filed December 19, 2003